IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 324 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VALABHAI GOVABHAI & SONS

Versus

DIVYAKUMARI GIRIRAJ CHUDASMA

Appearance:

1. Appeal from Order No. 324 of 2000

MR JITENDRA MALKAN for Petitioner No. 1-2

..... for Respondent No. 1-8

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 20/09/2001

ORAL JUDGEMENT

1. The appellants-plaintiffs have challenged in this Appeal the impugned order dated 31.7.2000 passed by the learned Civil Judge (SD), Gondal, below Ex.5 in Special Civil Suit No.21 of 2000 whereby the learned Judge

rejected the application Ex.5.

2. Learned Counsel Shri Malkan for the appellant submitted that the Suit of the plaintiff was within time, but the learned Judge has committed an error in dismissing the application Ex.5 on the ground that the appellants have no prima facie case.

3. In the instant case prior to filing of Special Civil Suit No.21 of 2000 the appellants - plaintiffs filed Regular Civil Suit No.181 of 1999 and thereafter the present Suit is filed. According to the plaintiff the Agreement to sell was executed by the father of the present defendants No.1 to 4 way back on 2.4.1981. Thus, the document of Agreement to sell being the old document, the learned Judge refused to place much reliance upon it. It has come on record that the defendant had already sold the property to defendants No.5 & 6 by way of registered Sale Deed. In turn the defendants No.6 & 7 by mark 4/13 and 4/14 sold the property to defendant No.7. The prayer was made by the plaintiffs only against the defendant No.16 by way of Ex.5. Considering all these aspects the learned Judge was of the opinion that when the plaintiffs failed to prove prima facie case in their favour and that the balance of convenience is also not in their favour, therefore, he dismissed the Application Ex.5. While rejecting the application Ex.5 the learned Judge has exercised his sound discretion which does not call for any interference of this Court in this Appeal.

Accordingly, this Appeal fail and is hereby dismissed.

As the main Appeal from order is dismissed, Civil Application No.7841 of 2000 will not survive. The same is accordingly disposed of.

sd/-

Date : September 20, 2001 (B.J.Shethna, J.)

sas